

THE MINNESOTA EXPERIENCE
by
Frances Coakley Ames
Supervisor, Section on Mental Retardation
Minnesota Department of Public Welfare

I am here representing the Minnesota Commissioner of Public Welfare who administers a state guardianship program for 10,741 mentally retarded which has been in existence since 1917, as part of our original Children's Code. I represent a state with a population of three and a half million, covering 80,000 square miles, with a north-south distance of approximately 500 miles and east-west distance of approximately 200 miles. Our average per capita income in 1965 was \$2,625. We rank 24th highest in average per capita income in this country. These facts are given to you since the setting in which a guardianship program is administered has some pertinence to structure and procedures in organizing such a service.

Any consideration of Minnesota's guardianship program must be considered in relationship to total services for the mentally retarded and to the total public welfare program in Minnesota. Minnesota's program for the mentally retarded began in 1851, at the first meeting of the Territorial Legislature. At that time probate court judges were delegated care and custody of the person and property of "idiots, lunatics, and other persons of unsound mind." Subsequent legislatures prohibited placement of the mentally retarded in the state hospitals for the insane, required the Faribault institution to provide the retarded with proper "training and instruction," and established additional schools and hospitals for "idiots and imbeciles," "defectives," and for the "epileptics." In 1910 the Board of Control (whose powers are now exercised by the Commissioner of Public Welfare) employed a well-known psychologist, Dr. Fred Kuhlmann, to devise a mental testing program for the use of state institutions and to provide better classification of retardates. Dr. Kuhlmann became the director of research at Faribault. His views were influential in the subsequent development of Minnesota's retardation program. A 1916 Governor's Commission on Child Welfare recommended legislation authorizing the Board of Control to exercise guardianship of the feeble-minded. The Commission believed that ultimate responsibility for the handicapped should rest with a state agency rather than with private individuals and organizations. In addition, the "commitment" provision was designed to permit the agency to exercise authoritative control of retarded persons.

Minnesota's guardianship law dates back to 1917 when the Children's Code was passed by our legislature. At that time, we had Child Welfare Boards; their functions were taken over in 1939 by county welfare boards. Minnesota's Statutes 257.175 states, "It shall be the duty of the commissioner of public welfare to promote the enforcement of all laws for the protection of defective, illegitimate, dependent, neglected, and delinquent children, to cooperate to this end with juvenile courts and all reputable child-helping and child-placing agencies of a public or private character, and to take the initiative in all matters involving the interests of such children where adequate provisions therefore have not already been made."

Minnesota Statutes 393.07 concerning powers and duties of the county welfare board states, "To assist in carrying out the child protection, delinquency prevention and family assistance responsibilities of the state, the county welfare board shall administer a program of social services and financial assistance to be known as the public child welfare program. The public child welfare program shall be supervised by the commissioner of public welfare and administered by the county welfare board in accordance with law and with rules and regulations of the commissioner.

"The purpose of the public child welfare program is to assure protection for and financial assistance to children who are confronted with social, physical, or emotional problems requiring such protection and assistance. These problems include, but are not limited to, the following:

1. Mental, emotional or physical handicaps
2. Need of parents for assistance with child rearing problems or in placing the child in foster care.

"A county welfare board shall make the services of its public child welfare program available as is required by law, by the commissioner, or by the courts, and shall cooperate with other agencies, public or private, dealing with the problems of children and their parents as provided in this subdivision. The county welfare board . . . shall administer all forms of public welfare, both for children and adults, responsibility for which hereafter may be imposed on the commissioner of public welfare by law, including aid to dependent children, old age assistance, aid to the blind, child welfare services, mental health services, and other public assistance or other public welfare programs or services. The county welfare boards shall supervise wards of the commissioner."

The above-quoted statutes do not apply specifically to guardianship but provide the background and supplementary services for a total program for individuals and families where mental retardation may be the problem. I believe that Minnesota's guardianship program for the mentally retarded has been strong since the legal basis:

1. Places responsibility upon the commissioner of public welfare who, in turn, delegates responsibility (through the county welfare board) to the local community.
2. Provides for an integrated program.
3. Provides for continuity of services, and
4. Provides the necessary flexibility to best meet the needs of the mentally retarded, the family, and the community.

Minnesota's public welfare program is administered by the commissioner of public welfare through 87 county welfare boards. These are staffed with approximately 1000 social workers.

A retarded individual may be placed under the guardianship of the commissioner of public welfare in Minnesota through probate court action upon the petition filed by any relative or reputable person. This guardianship remains in effect for the rest of the person's life unless he is restored to capacity or discharged from guardianship by probate court. Our program places responsibility on the county welfare department to see to it that services and programs are provided to meet the varying needs of the mentally retarded.

With responsibility placed upon the county welfare department, this does not mean that the agency provides all the necessary services; however, it is the responsibility of that agency to see to it that the total resources of the local community or of the state are brought to bear upon the needs of or problems presented by the retardate. This means utilization of medical resources, psychiatric and psychological services, educational, vocational, legal, religious, leisure time, child protection, marital and financial services.

We are fortunate that we have a very general definition of mentally deficient. Minnesota's Statutes 525.749 states, "Mentally deficient person means any person, other than a mentally ill person, so mentally defective as to require supervision, control, or care for his own or the public welfare."

We also feel that the requirement of a ten days' notice to the commissioner of public welfare prior to the hearing is a strong feature. Since the county welfare department must submit the social history within this ten day period, the staff of the commissioner of public welfare has an opportunity to review the diagnosis and desirability of commitment. Should there be questions, a request may be made to the county welfare department for a delay in the hearings until further consideration may be given.

Minnesota Statutes 525.752 on examiners states, "The patient shall be examined at such time and place and upon notice to the patient and to such other persons and served in such manner as the court determines. The court shall appoint two licensed doctors of medicine, and in addition thereto, may appoint one person skilled in the ascertainment of mental deficiency, to assist in the examination. The court, in all counties except those containing cities of the first class, shall require the county welfare board to make an investigation into the financial circumstances, residence, and social history of such persons, and except in emergency situations, where delay in commitment would be prejudicial to the interests of the patient or the public, shall require in advance of commitment a report in writing of such investigation for the use and guidance of the examiners and the institution to which such person may be committed. In counties containing cities of the first class the court may require such investigations."

We believe that in the hearing process the mentally retarded individual has considerable protection. The examining board consists of the probate judge or court commissioner, two doctors--in large cities one would be a psychiatrist--and generally two lawyers, the county attorney representing the petitioner, and

another lawyer, acting as guardian ad litem and attorney for the mentally retarded individual. The requirement of a guardian ad litem to represent the mentally retarded individual has been established through a supreme court decision.

Minnesota Statutes 525-753, subdivision 2, states, "If the patient is found to be mentally deficient or epileptic, the court shall appoint the commissioner guardian of his person and commit him to the care and custody of such commissioner."

Minnesota Statutes 525.762, subdivision 2, states, "Upon commitment of a mentally deficient or epileptic patient, the director may place him in an appropriate home, hospital, or institution or exercise general supervision over him anywhere in the state outside of any institutions through any child welfare board or other appropriate agency thereto authorized by the director."

Any retarded person presents an individual set of problems requiring individual solutions. Plans and goals are dependent upon the physical and emotional needs of the retarded person, the emotional needs of the various members of the family, and the availability of appropriate resources. The evaluation of the total family problems should clarify the treatment goal and indicate the methods and resources to be utilized. Since the nature of the impairment varies with the age of the person, the process of evaluation and provision of training and treatment plans is a dynamic one, changing with the advancing age and individual needs of each retarded person.

Special attention is being directed to adequacy of plans for the living situation, medical and dental care, education, use of finances, and protection of legal rights. We are making it mandatory that the county welfare department see to it that every retardate under their supervision has an annual medical and dental examination, that medical and dental recommendations are carried through, that all school age children be referred to the school district for educational plans, and that all retardates accused of delinquency or crime have legal representation. Protection from various forms of exploitation is a responsibility in supervision. Where legal advice is required by the county welfare department, the county attorney has such responsibility.

The purpose of guardianship is to supply continuous responsible governance for the individual who needs it "by reason of mental deficiency as that term is defined by law; where it can be clearly shown that such continuous responsible governance cannot otherwise be provided."

The significance of an individual's status as a ward is seen from the fact that the guardianship is of his person and he, therefore, is placed in a relation to the guardian approximating that of child to parent. Like the parent, the guardian becomes responsible for the care, custody, and control of the individual and is clothed with power to make important decisions and arrangements respecting his well-being, such as those concerning medical care, employment, and marriage.

Thus, in the dimension of civil liberties, not to mention ordinary personal freedom of choice, commitment to guardianship must be regarded as a very serious matter to which personal thought should be given.

Commitment as mentally deficient places ward in a minority status where there are certain disadvantages as well as advantages. Both the limitations and the responsibilities of minority status are intended to serve protective purposes. The limitations restrain the ward from exercising directly many rights and benefits to which he is entitled under the laws of the State and its democratic tradition, such as:

1. To choose or change his residence, custody, care, education, and employment,
2. To enter into marriage, divorce proceeding, or other contracts.
3. To sue or defend himself or to appoint an agent or attorney to represent him.
4. To receive and manage property or money belonging to him.
5. To buy, sell, mortgage, lease, or otherwise engage in business transactions.
6. To vote.

This restraint is not intended to deprive the ward of his personal rights, but to prevent him from damaging himself and his property by his own improvident acts or fraud of others.

The President's Task Force on Law states, "Liberty is freedom of choice within the general system of laws and social values. The individual's liberty is impaired when he is not permitted the same range of choices as his peers. Many people, in our society, the retarded included, suffer from unauthorized or unsanctioned curtailment of their liberties. It must be our constant concern to correct and offset these, especially since the people directly concerned are often unable to struggle effectively on their own behalf.

"Clearly, the intervention of public authorities is not required where social or personal interests can be served by other means."

The following section contains some of the laws relating to guardianship as mentally deficient:

Guardianship of the mentally retarded is of person only; however, Minnesota Statutes provide that the commissioner of public welfare or welfare boards may hold funds in trust for mentally deficient wards. Minnesota Statutes 256.88 Social Welfare Fund Established "All monies and funds now or hereafter held by the commissioner of public welfare and the county welfare boards of the several counties in trust or for the benefit of defective, illegitimate, dependent, neglected, and delinquent children or persons mentally deficient, inebriate, or insane, or other wards or beneficiaries, under any law now or hereafter enforced, shall be in the same hereby or consituted and made into a single fund to be known as the Social Welfare Fund which shall be deposited at interest, held, or disbursed.

"Minnesota Statutes 256.91 Purposes. From that part of the social welfare fund held in the state treasury subject to disbursement as provided in Section 256.90 the commissioner of public welfare at any time may pay out such amounts as he deems proper for the support, maintenance, or other legal benefit of any of the defective, illegitimate, dependent, neglected, and delinquent children, or persons mentally deficient, inebriate, or insane, or other wards or persons mentally deficient, inebriate, or insane, or other wards or persons entitled thereto, not exceeding in the aggregate to or for any person the principle amount previously received for the benefit of the person, together with the increase thereof from an equitable apportionment of interest realized from the social welfare fund,

"When any such person dies or is finally discharged from the guardianship, care, custody, control of the commissioner of public welfare, the amount then remaining subject to use for the benefit of such person shall be paid as soon as may be from the social welfare fund to the persons thereto entitled by law.

"Minnesota Statutes 256.92 Commissioner of Public Welfare, Accounts. It shall be the duty of the commissioner of public welfare and of the county welfare boards of the several counties of this state to cause to be deposited with the state treasurer all monies and funds in their possession or under their control and designated by Section 256.91 as and for the social welfare fund; and all such monies and funds shall be so deposited in the state treasury as soon as received. The commissioner of public welfare shall keep books of account or other records showing separately the principle amount received and deposited in the social welfare fund for the benefit of any person, together with the name of such person, and the name and address, if known to the commissioner of public welfare, of the person from whom such money was received; and at least every two years, the amount of interest, if any, which the money has earned in the social welfare fund shall be apportioned thereto and posted in the books of accounts or records to the credit of such beneficiary."

Minnesota Statutes 256.93 Commissioner of Public Welfare; Possession of Estates. Subdivision 1 Limitations. "In any case where the guardianship of the person of any defective.... has been committed to the commissioner of public welfare, and in any case where the guardianship for the person of any mentally deficient person has been committed to the commissioner of public welfare, the probate court having jurisdiction of such estate may on such notice as the court may direct, authorize such commissioner to take possession of the personal property and such estate, liquidate the same, and hold the proceeds thereof in trust for such ward, to be invested, expended and accounted for as provided....

Subdivision 2 Annual Report. The commissioner of public welfare shall annually or at such other time as the probate court may direct file with the court an account of monies received and disbursed by him for his respective wards, pursuant to Subdivision 1. Upon petition of the ward or of any person interested in such estate, and upon notice to the commissioner, the probate court may terminate such trust and require final accounting thereof."

Minnesota Statutes 517.03 Related to Marriage. "Mentally deficient persons committed to the guardianship of the commissioner of public welfare may marry on receipt of written consent of the commissioner. The commissioner may grant such consent if it appears from his investigation that such marriage is for the best interest of the ward and the public. The clerk of the district court in the county where the application for a license is made by such ward shall not issue the license unless and until he has received a signed copy of the consent of the commissioner of public welfare."

Minnesota Statutes 256.07 relates to sterilization: "When any person has lawfully been committed as mentally deficient to the guardianship of the commissioner of public welfare, the commissioner of public welfare, after consultation with the superintendent of the state school for the mentally deficient, a reputable physician, and a psychologist selected by the commissioner of public welfare, and after a careful investigation of all the circumstances of the case may, with the written consent of the spouse or nearest kin of such mentally deficient person, cause such person to be sterilized by the operation of vasectomy or tubectomy. If no spouse or near relative can be found, the commissioner of public welfare as the legal guardian of such mentally deficient person, may give his consent."

A mentally deficient individual may be released from the guardianship of the commissioner of public welfare on two bases--restoration to capacity or discharge of guardianship. Where a re-evaluation indicates that an individual is not mentally deficient, the commissioner of public welfare shall petition to probate court for restoration to capacity. This restores the mentally retarded individual to his full civil rights. On the other hand should the person still have a diagnosis of mental retardation but is not in need of supervision, then the commissioner of public welfare may petition for a discharge of guardianship.

Minnesota Statutes 525.78 states, "Any reputable person or the director may petition the court of commitment, or the court to which the venue has been transferred, for the restoration to capacity of a patient. Upon the filing of such a petition, if the petition is made by the director, the court shall fix the time and place for the hearing thereof, notice of which shall be given as the court directs. Upon proof of the petition, the court shall restore the patient to capacity."

Subdivision 2 , "Upon proof that the patient is not mentally deficient the court shall order him restored to capacity at the expiration of 30 days from the day of such order."

Two statutes relate to discharge of guardianship. Minnesota Statutes 525.78, Subdivision 5, states, "When it appears to the commissioner that a person committed to his guardianship is no longer in need of such guardianship, he may petition the court of commitment or the court to which the venue has been transferred for his discharge of such guardian."

Subdivision 6 "Upon the filing of such petition the court shall fix the time and place for the hearing thereof, notice of which shall be given as the court directs. Upon proof of the petition the court shall make an order discharging the director as such guardian."

Minnesota Statutes 525.611 states, "When it appears to the commissioner of welfare that a person committed to his guardianship as a mentally deficient person is no longer in need of guardianship or supervision for his own or the public welfare, or when the commissioner can no longer exercise his guardianship and supervision because the mentally deficient person no longer lives in the state or his whereabouts are unknown and cannot be ascertained, the commissioner may petition the court of commitment or the court to which the venue has been transferred for his discharge of such guardian, stating facts and supporting his petition."

In view of changing concepts of mental retardation and the development of more specialized services for the retarded, I believe that some changes in the administration of our guardianship law may be indicated. At the time that a static concept of mental retardation existed in which many of the retarded were thought to be "hopeless," and when the only service available was the state school and hospital, the tendency developed for the families and counties to abrogate their responsibilities to the retarded. Today, with our belief that basic responsibility for a family member rests with the family, and also because we realize that for many of the retarded the prognosis of a satisfactory adjustment within the community is very likely, we are emphasizing guardianship.

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